



- III. With 1) a noncompliance with Rule 47.1, 2) in complete contravention with this Court's opinion in *Sharif*, and 3) relying on a material error of fact conclusively contradicted by the record, the Opinion fails to make the proper review for factual and legal sufficiency of SIM's evidence which does not address each and every one of Beasley's claims, where, for instance, there was no evidence that Beasley could not prevail on the derivative suit against the individual officers of a nonprofit corporation, or prevail on the damage claims of his company.
- IV. The 30-page Opinion resolves Beasley's Issue #1 against him based on two material errors of fact conclusively contradicted by the record, yielding an outcome which is contrary to this Court's opinion in *Willms*, as the trial court's failure to make findings forced Beasley to guess at how the court ruled against him, leading to a long, *pro se* brief and a long opinion.

## ARGUMENT AND AUTHORITIES

- A. Contrary to recitals in the Opinion, the trial court never made the mandatory finding that Beasley had no probability that he could not prevail on his claims.**

The Opinion states a material error of fact on pg. 13, conclusively contradicted by the record, stating, "The trial court did not abuse its discretion by finding that SIM met its burden under section 11.054 to show that there is not a reasonable probability that Beasley will prevail in the litigation."

Read the short 2-page order for yourself. (C.R. 1259). Appendix A.

In truth, nowhere does the trial court FIND Beasley had no reasonable probability to prevail in the litigation. The finding is just not there. And that finding is mandatory. *Drake v. Andrews*, 294 S.W.3d 370, 374 (Tex.App. — Dallas 2009, pet. denied)(***in every instance***, the judge must conclude there is no reasonable probability the plaintiff will prevail in his litigation against the defendant).

The required finding is not in the order, nor stated from the bench, and under an abuse of discretion standard, the Court may not substitute its conclusion for one the trial court did or did not make. The Opinion nevertheless makes such an erroneous substitution on page 13, if not withdrawn and this motion granted.

**B. The 30-page Opinion fails to address issues raised in Beasley's appeal.**

Under Rule 47.1, Tex. R. App. P., a court of appeals is obligated to hand down a written opinion that addresses every issue raised and necessary to final disposition of the appeal. *West v. Robinson*, 180 S.W.3d 575, 577 (Tex.2005) (per curiam).

The Opinion on page 3 points-out Beasley appealed the legal and factual sufficiency of SIM's evidence that he had no probability to prevail on his claims, but the panel only made an abuse of discretion review.

A trial court's findings under chapter 11 of the Texas Civil Practice and Remedies Code may be reviewed for legal and factual sufficiency because section 11.054 requires the trial court to make evidentiary findings. *Amir-Sharif v. Quick Trip Corp.*, 416 S.W.3d 914, 918 (Tex. App.-Dallas 2013, no pet.) But rather than make that review, the Opinion relies on a material error of fact, conclusively contradicted by the record, stating "SIM addressed each of Beasley's causes of action pleaded in his operative petition". This statement of fact is in error, and is simply untrue.

The Opinion does not make the legal and factual sufficient test on SIM's evidence, Exhibits A – S, which has no evidence at all against several of Beasley's claims.

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**C. The Opinion ignores and SIM failed in its burden that Beasley could not prevail on his derivative claims against Burns and O'Bryan, officers of a nonprofit corporation, and his damage claims of his company.**

In particular, nowhere in the Opinion does it provide a review of any legal authority or factual basis that Beasley could not prevail on his derivative claims, on behalf of SIM, against Burns and O'Bryan (C.R. 647, Count 13).

No evidence against these two claims exists in SIM's exhibits A – S, nor anywhere else in the record. The burden to show Beasley could not prevail on those claims was entirely SIMs, which they failed to meet. *Drake, Id.* at 375.

Furthermore, SIM waived any complaint that Beasley, 100% owner of his company, Netwatch Solutions, could not pursue damages for business disparagement. A claim that a party lacks standing must be raised in a plea of abatement, Tex. R. Civ. P. 93(3). *Pennington v. Cypress Aviation*, 05-19-00345-CV (Tex.App.—Dallas April 9, 2020, no writ)(J. Osborne mem. Opinion), which SIM failed to make. The Opinion, in violation of Rule 47.1, simply ignored addressing Beasley's issues on appeal (2<sup>nd</sup> Amended Brief 11/04/2019, Issues 4iii and 4v).

**D. The Opinion, relying on a material error of fact, ignores this Court’s precedent in *Willms*<sup>2</sup>, which presumes harmful error occurs when findings of fact are not made when multiple theories to support the judgment exist, such as Beasley faced.**

The Opinion dismisses Beasley’s Issue #1 on a false fact, conclusively contradicted by the record.

The Opinion on page 15 followed this court’s holding in *Willms* that a trial court’s failure to make findings of fact is harmless error, when there “was ‘**only a single ground** for determining the *Willmses* vexatious litigants before the court’—repeated litigation attempts under VLA section 11.054(2).”

The Opinion, though, then states a false fact on page 15:

***Similarly here*, the basis for SIM’s motion was VLA section 11.054(1), that Beasley maintained at least five litigations in the seven-year period preceding the date of the motion.**

Irrefutably, the record shows SIM alleged multiple grounds that Beasley was a vexatious litigant.

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<sup>2</sup> *Willms v. Ams. Tire Co.*, 190 S.W.3d 796, (Tex.App.-Dallas 2006, pet. denied)

**“Peter Beasley is a vexatious litigant pursuant to both CPRC § 11.054(1) and (2)” [C.R. 671] [C.R. 683]**

And rather than alleging five failed litigations, “SIM contends there are nine litigations meeting the statutory criteria.” *see* Opinion, pg. 18.

Therefore, by this Court’s prior judgment in *Willms* and the Opinion’s own logic, Beasley is harmed with the failure of knowing how Beasley was held to be a vexatious litigant, since there were multiple grounds.

**E. Beasley was harmed by the lack of findings.**

The Opinion vividly highlights the harm to Beasley in footnote 8, acknowledging Beasley appealed also defending against VLA § § 11.054(2) and 11.054(3), which the court ignored, but Beasley could not. Beasley, a *pro se* litigant, was harmed with the need to address all possible theories to support the judgment, a task even an experienced appellate lawyer would have trouble doing. His brief, trying to attack all of the possible reasons, was 14,394 words long, of a possible 15,000 – limiting his ability to brief his constitutional claims.

Without the findings from the trial court, and relying on Five (5) Material Errors of Fact, see Table 1, the Opinion runs long too.

**F. Double-counting of failed litigations is not permitted.**

The Opinion clearly ignores the statutory protection of § 11.054(A), Tex. Civ. Prac. & Rem. Code that only litigations which are *finally* determined adverse to the plaintiff may be counted. The Opinion double-counts, first counting the entire *Beasley v. SIM* litigation (LN7) on page 18, but then also counting interim proceedings (LNs 5, 6, 8, 9) within that same conflict as individual failed litigations; although, none of the five, given this on-going appeal, are final.

**PRAYER**

For the above reasons, Appellant Peter Beasley asks the Court to grant this motion, withdraw and modify the facts, its Opinion and Judgment, reverse the judgment of the trial court, and remand this cause for further proceedings.

Respectfully submitted,

/s/Peter Beasley  
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Certificate of Service

I hereby certify that on the 12<sup>th</sup> day of October 2020, a true copy of the foregoing instrument was served on opposing counsel for the defendants by electronic means and the electronic transmissions were reported as complete.

/s/Peter Beasley



TABLE 1  
MATERIAL ERRORS OF FACT IN THE OPINION

No.	Error of Fact	Where	Correct Fact
1	Both Beasley's original petition and his operative petition <b>filed after the case was transferred to Dallas County</b> begin with Beasley's assertion that "Plaintiff, Peter Beasley, ("Beasley") files this . . . Petition, complaining of Defendant" SIM. <b>Both</b> petitions state "claim[s] for relief" including "monetary relief over \$1,000,000," "non-monetary relief," declaratory and injunctive relief, and "imposition of a receiver to take control over" SIM. SIM is identified in <b>both</b> petitions as "defendant."	pg. 4	Beasley never filed a petition after the case was transferred to Dallas County, and he was only a counter-defendant in Dallas County.
2	<b>SIM addressed each of Beasley's causes of action pleaded in his operative petition, ...</b>	pg. 11	At the hearing, SIM did not provide evidence that addressed each of Beasley's causes of action.
3	The trial court did not abuse its discretion <b>by finding that SIM met its burden under section 11.054 to show that there is not a reasonable probability that Beasley will prevail in the litigation.</b>	pg. 13	The trial court never found Beasley had no probability to prevail in the litigation.
4	<b>Similarly here</b> , the basis for SIM's motion was VLA section 11.054(1), that Beasley maintained at least five litigations in the seven-year period preceding the date of the motion.	pg. 15	There were multiple grounds in SIM's motion.
5	<b>Beasley did not raise this objection in the trial court</b> , and does not now argue that he was, in fact, represented by counsel in any proceeding other than LN 7.	pg. 19	Beasley objected that SIM never showed he was pro se in 5 failed litigations in Beasley's Motion for New Trial.

CAUSE NO. DC-18-05278

PETER BEASLEY,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	
	§	DALLAS COUNTY, TEXAS
SOCIETY OF INFORMATION	§	
MANAGEMENT, DALLAS AREA	§	
CHAPTER, et al.,	§	
	§	
Defendant.	§	191st JUDICIAL DISTRICT

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ORDER GRANTING DEFENDANTS' MOTION TO  
DECLARE PETER BEASLEY A VEXATIOUS LITIGANT

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On September 20, 2018, the undersigned heard Defendants' Motion to Declare Peter Beasley a Vexatious Litigant. The Parties appeared through counsel. After considering the motion, the post-hearing briefing from both parties, the evidence presented, and arguments of counsel, the Court finds that the statutory elements are satisfied in all respects and therefore makes the following ORDER.

The Motion to Declare Peter Beasley a Vexatious Litigant is **GRANTED** and the Court declares Peter Beasley a Vexatious Litigant.

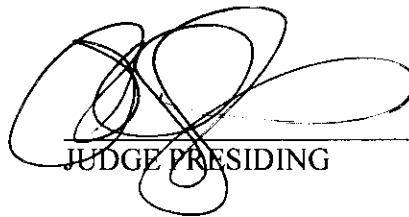
Plaintiff Peter Beasley is required to post bond in the amount of \$422,064.00 with the District Clerk as security per TEX. CIV. PRAC. & REM. CODE § 11.055 within thirty (30) days of this Order. If such security is not timely posted, this case will be dismissed with prejudice per TEX. CIV. PRAC. & REM. CODE § 11.056.

Furthermore, the Court prohibits Plaintiff Peter Beasley from filing any new lawsuits *pro se* in any court in the State of Texas until Plaintiff receives permission from

the appropriate local administrative judge pursuant to sections 11.101 and 11.102 of the TEX. CIV. PRAC. & REM. CODE. Failure to comply with this ORDER shall be punishable by contempt, jail time, and all other lawful means of enforcement. TEX. CIV. PRAC. & REM. CODE § 11.101(b).

It is further ORDERED that the Clerk of the Court provide a copy of this order to the Office of Court administration of the Texas Judicial System within 30 days of entering this order.

SIGNED this 17th day of December, 2018.



JUDGE PRESIDING

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Associated Case Party: Peter Beasley

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Peter Beasley		pbeasley@netwatchsolutions.com	10/12/2020 9:11:40 PM	SENT

Associated Case Party: Society of Information Management

<b>Name</b>	<b>BarNumber</b>	<b>Email</b>	<b>TimestampSubmitted</b>	<b>Status</b>
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